IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

1. CIVIL MISC. APPEAL No. 138 of 2005

R.S.R.T.C.
V/S
LOKESH

2. CIVIL MISC. APPEAL No. 139 of 2005

R.S.R.T.C.
V/S
SHAYAMADEVI

Mr. ARJUN SINGH, for the appellant / petitioner

Date of Order : 11.4.2005

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the appellant at length.

These two appeals arise out of common Award passed by learned Tribunal dt. 29.6.2004, deciding two claim petitions.

The case of the claimants is, that on the fateful day i.e. 31.1.2000, two claimants were traveling on scooter no. RJ27-8M-4154 going from village Odan to Udaipur. In this process, at about 6.00 PM, near village Mejera, appellant's bus no.2848 came from behind, being driven negligently, and hit the scooter which was going on correct side. As a result of this accident, both the victims sustained injuries, for which two claim petitions have been filed.

The defence of the appellant was, that no accident occurred from his bus, rather a wholly false case has been cooked up. The plea taken by learned counsel is, that no accident took place from Corporation’s bus. The learned Tribunal consolidated two claims, and framed issues. Issue no.1 related to question of happening of accident by negligent driving of the bus, and victim having suffered injuries, while issue no.2 related, to quantum of compensation. Issue no.3 related to

question as to whether no liability of defendant no.1 arises in view of pleadings taken in reply.

During the trial, the victims were examined as AW-1 and AW-2, while the driver appeared as NAW-1. The learned Tribunal decided issue no.1 in favour of claimants, finding, that the accident took place, and that the accident occurred on account of negligent driving of the bus, and consequently, the issue no.3 was decided against the appellant. Deciding issue no.2, claimant Lokesh was held entitled for Rs.51,000/- as compensation, while Shayamadevi was held entitled to total amount of Rs.47,600/- by way of compensation.

Assailing the finding, it is contended, that from the record it is clear that no accident occurred from the bus, inasmuch as, in the First Information Report, which was lodged, the registration number of the bus was not disclosed, and on the next day, while it was returning from Baroda, it was detained by the police. Thus there is no material to show that the accident occurred, and obviously no evidence about negligence was there. Then regarding the quantum, only two submissions were made, being that, even the learned Tribunal has found, that in Lokesh' case, there is no reliable evidence about the income. Still some of Rs. 4,000/- has been awarded under the head of loss of income. Other submission made is that, there is nothing to show that victim got treated at Ahmedabad. Notwithstanding this, amount has been awarded for journey to and fro Ahmedabad.

I have considered the submissions, and have also closely gone through the record, which had been requisitioned and received. The two claimants have clearly deposed in their evidence, that while they were going on scooter, bus came from behind, and hit the scooter. Ofcourse, Shyamadevi has deposed that she could see number of bus, which hit, but then, she has deposed that State Corporation bus had come and hit. But then the claimant Lokesh has clearly deposed, about the delinquent bus having hit, and his having sustained injuries. In cross-examination, he

was put various questions in this regard, and was confronted with FIR, but then his testimony could not be shaken, so as to render to be doubted, much less disbelieved. The FIR Ex.2 has been lodged on the same day at about 6.15 PM. True it is, that in the FIR, registration number of bus is not given, but then, this much has clearly been mentioned, that it was Rajasthan Roadway Bus, which was coming from Beawar and going to Baroda. It is not in dispute, even from the statement of driver, that on that day, his bus came from Beawar, and was going to Baroda. He has admitted, that when he reached Udaipur bus stand, police people stopped his bus, and told him that he has caused accident, then police people from Delwara were called. With this, it is deposed that police people asked the passengers, and passengers denied to have caused any accident, and then he went to Baroda. Thus it is clear, that it is not in dispute, that bus was coming from Beawar and going to Baroda on that day, and bus was stopped at Udaipur, and was investigated about causing of accident. Since the Corporation does have complete record, about the journey of the particular bus from the Station of origin till destination, they could have very well produced the record to show, that on that day, this bus was not there on the route at such a time schedule, so as to eliminate the possibility of vehicle being there at the time of accident. This was all the more so required, because the driver has tried to depose, that bus started from Beawar at about 12.00 PM in the noon, and reached Nathdwara at about 2.30. Obviously, meaning thereby, that at 6.00 PM, bus could not be at the place of accident. Thus non-production of material on the part of Corporation, in this regard, is one circumstance, which is required to be taken into account by the court, while deciding the reliability of the version of the driver, about no accident having occurred. It does not stand to reason, as to why claimants would obviously implicate this particular bus.

True it is that, the number of registration of bus is not given in the first version, being FIR, but mention of bus, being one going from Beawar to Baroda, in the circumstance of the present case, in my

view, is sufficient to establish the identity of the bus in question, to be the bus causing the accident. Thus I do not find any error in the finding of learned Tribunal on issue no.1.

Regarding issue no.2, a look at Judgment shows, that in Lokesh' case, learned Tribunal has not believed the claimants evidence about his earning Rs.4,000/- per month, who claimed to be working as Electrician, but then has assessed the income, at the minimum of Rs. 2,000/- per month. Regarding the amount of journey to & fro from Ahmedabad, it has been found by the learned Tribunal, that bills produced by the claimants clearly establish, that bills are from Ahmedabad, and thus the claimants have been held entitled to compensation under this head. Learned counsel for the appellant has not been able to show, as to how this part of finding is wrong. In that view of the matter, I do not find any error in the finding of learned Tribunal on this issue as well.

I am conscious of the fact, that this appeal is in the nature of first appeal, but then, the guidelines given by the Hon'ble Supreme Court, in the recent decision, in Bolin Chetia Vs. Jogadish Bhuyan, reported in JT 2005(3) SC-267, are enlightening, wherein Hon'ble the Supreme Court has expected the first Appellate Court, exercising power to dismiss the appeal summarily, to pass speaking order, making it precise, that it did go into the pleas of fact and/or law sought to be urged before it, and upon deliberating on them, found them to be devoid of any merit or substance, and giving brief reasons. Then, in para-22 reliance was placed on the Constitution Bench judgment in Union of India Vs. Raghubir Singh, reported in (1989)2 SCC-754, and it was observed as under:-

> "……At times, the Court has been criticized for being too liberal in entertaining the cases and adding to the pendency of dockets before it. It is, therefore, all the more necessary that worthless cases, wholly devoid of any merit, ought to be checked at the entry point itself. Litigation is a costly affair. In an appeal, where even in the absence of the opponent, the appellant fails to convince the Court that any arguable question, either of fact or of law, is involved in the case, we fail to understand

> how the appellant can still urge that the respondent should be noticed to appear before this Court and incur huge expenditure in terms of money, time and energy and add to the number of pending matters.....”

Similarly in para-17, the only caution was put, to the effect, that the appeal should be dismissed when the first appellate court is convinced, that the appeal is so worthless, raising no arguable question of fact or of law, as it would be a sheer wastage of time and money, for the respondent being called upon to appear, and would also be an exercise in futility for the Court.

If the present case is considered on these parameters, it is clear, that putting the respondent to notice would result into nothing, except depriving him of a substantial part of the petty amount of compensation awarded in their favour. The present appeal, in view of the above discussion, does not at all involve any arguable question of fact or of law, for the poor claimants/respondents being called upon to appear, and if called, it would merely be an exercise in futility for the Court.

The appeals thus, have no force, and are hereby dismissed summarily.

(N P GUPTA),J.

/Srawat/